

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MAURICE J. MCDONALD,

Plaintiff,

vs.

DR. SHEARING, *et al.*,

Defendants.

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Case No. 13-cv-00879-JPG-DGW

MEMORANDUM AND ORDER

This matter comes before the court on the Report and Recommendation (“R & R”) (Doc. 78) of Magistrate Judge Philip M. Frazier with regard to Plaintiff’s Motion (Doc. 7) for a Preliminary Injunction. Defendant Dr. Shearing filed a response (Doc. 74) and Plaintiff filed Objections (Doc. 75).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Plaintiff has filed objections and therefore, the Court reviews the R & R *de novo*. In this matter, the Magistrate Judge's recommendation is based on the fact that Dr. Shearing was only defendant at the time the Plaintiff's Motion was filed and Dr. Shearing has since left his employment at the facility where the plaintiff is incarcerated. Plaintiff is objecting to the R & R

stating that his motion for Preliminary Injunction applies to the position that Dr. Shearing's held, not Dr. Shearing individually.

The Magistrate's finding that preliminary injunction cannot be carried out by any defendant presently in the matter is correct. As such, the Court has review the entire file for clear error and finds none.

It is noted that the Plaintiff has been granted leave, and has filed, an amended complaint. Upon completion of the threshold review of the amended pleadings, the plaintiff may refile this Motion naming the appropriate defendant(s) and/or any such request for relief as he believes appropriate and necessary.

Accordingly, the Court hereby **ADOPTS** the Report and Recommendation in its entirety (Doc. 78) and **DENIES** Plaintiff's Motion (Doc. 7) for a Preliminary Injunction.

IT IS SO ORDERED.

DATED: 12/03/2014

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE